

Appln No. 10/575,699
Amdt date November 23, 2009
Reply to Office action of May 21, 2009

Amendments to the Drawings:

The attached sheets of drawings includes changes to Figs. 2, 3, 6, 19-22 and 25-38. These sheets, which includes Figs. 2, 3, 6, 19-22 and 25-38, replaces the original sheet including Figs. 2, 3, 6, 19-22 and 25-38.

Attachment: Replacement Sheets

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REMARKS/ARGUMENTS

Claims 1-23 were pending in this application when last examined by the Examiner, of which claims 19-22 are withdrawn from consideration as being directed to a non-elected invention. Claims 4-9, 12-18, and 23 have been amended. Claims 24-34 have been added. Claims 1-3 and 10-11 have been canceled. In view of the above amendments and remarks that follow, Applicant respectfully requests reconsideration and an early indication of allowance of the now-pending claims 4-9, 12-18, and 23-34.

The Examiner objected to the drawings because some of the drawings are not clear. In response, Applicant submits herewith replacement drawings for replacing original FIGS. 2, 3, 6, 19-22, and 25-38. Withdrawal of the objection to the drawings is respectfully requested.

Claims 1, 4, 10, and 17 are rejected under 35 U.S.C. 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1 and 10 have been canceled. Claims 4 and 17 have been amended. The amendments now overcome the rejection under 35 U.S.C. 112, second paragraph. Withdrawal of the rejection under 35 U.S.C. 112, second paragraph, is respectfully requested.

Claims 1-9, 11-12 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Lin (U.S. Patent No. 5,423,816). Claims 1, 10, and 12-15 are also rejected under 35 U.S.C. 102(b) as being anticipated by Struder (PCT Publication PCT/CH02/0018). Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (U.S. Patent No. 5,423,816). Applicant respectfully traverses these rejections.

Claim 1 has been canceled in favor of new claim 24. The rejections of claim 1 will therefore be addressed with respect to claim 24. Support for claim 24 is found in various portions of Applicant's original application, including, for example, FIG. 8 of the drawings, and paragraph 0123 of Applicant's specification.

The limitations of claim 24 are not taught nor suggested in Lin nor Struder. Lin fails to teach or suggest the claimed "bone anchoring element" with a "receptacle" that receives a "connection end" of a "rigid tubular body." Lin also fails to teach or suggest the claimed "space

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holder for replacing a spinal disc or vertebrae adjacent to the connection element, the space holder having a tubular body with a flexible section having a helical recess." Such a "space holder" is also missing from Struder. Accordingly, claim 24 is in condition for allowance.

Independent claim 23 includes limitations similar to the limitations of claim 24 which make claim 24 allowable. Accordingly, claim 23 is also in condition for allowance.

Claims 4-9 and 12-18 are also in condition for allowance because they depend on an allowable base claim, and for the additional limitations that they contain.

Claims 25-34 are new in this application. Claims 25-34 are in condition for allowance because they depend on an allowable base claim, and for the additional limitations that they contain. Specifically with respect to claim 25, this claim recites that "the first rigid part has an external diameter different from an external diameter of the second rigid part." Support for this limitation is found, for example, in paragraph 0152 of Applicant's specification. Neither Lin nor Struder teach or suggest the limitations added by claim 25. Accordingly, claim 25 is also in condition for allowance for its added limitations.

With respect to claim 26, this claim recites that "the flexible tubular body has a first end and an opposing second end, wherein at least one of the ends is a threaded end provided with internal threads on an inner surface of the flexible tubular body, wherein at least a portion of the threaded end overlaps along the longitudinal axis with a portion of the tubular body with the helical recess." Support for this limitation is found, for example, in FIGS. 25-27 and FIG. 29 of Applicant's drawings, and in paragraph 0150, and 0164 of Applicant's specification. Neither Lin nor Struder teach or suggest the limitations added by claim 26. Accordingly, claim 26 is also in condition for allowance for its added limitations.

With respect to claim 27, this claim recites that "the internal threads extend along substantially an entire length of the inner surface of the flexible tubular body." Support for this limitation is found, for example, in FIG. 29 of Applicant's drawings, and in paragraph 0164 of Applicant's specification. Neither Lin nor Struder teach or suggest the limitations added by claim 27. Accordingly, claim 27 is also in condition for allowance for its added limitations.

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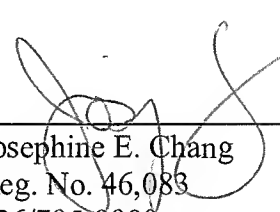
With respect to claim 28, this claim recites that "the helical recess extends along an entire length of the flexible tubular body from the first end to the opposing second end." Support for this limitation is found, for example, in FIGS. 25-27 and FIG. 29 of Applicant's drawings. Neither Lin nor Struder teach or suggest the limitations added by claim 28. Accordingly, claim 28 is also in condition for allowance for its added limitations.

With respect to claims 29-34, these claims further define the "space holder" of claim 23 which is missing from Lin and Struder. Support for claims 29-34 is found, for example, in FIGS. 1-5 of Applicant's drawings, and in paragraphs 0100-0114 of Applicant's specification. Accordingly, claims 29-34 are also in condition for allowance for their added limitations.

In view of the above amendments and remarks, reconsideration and an early indication of allowance of the now pending claims 4-9, 12-18, and 23-34 are respectfully requested.

Respectfully submitted,
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